1946 **File No.** O Land Improvement 46

Legal Department

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Subject: Opinion under the Bombay Land Improvement Schemes Act 1942

File No. O Land Improvement/46

Gen. 194 e

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C O N T E N T S.

Legal Department File No. O. Land Improvement/1946.

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	2280 26.3.46	Whether the land improvement schemes Act applies with equal force to any land owner whose lands are included in a Project (Scheme) no matters on what-terms e.g. inamdar of inam.villages-	5 - 6.
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Office of the R.L.A.

The questions referred to the R.L.A. for consideration are:-

(1) Whether Government can give ex-post-facto sanction under section 25(3) to schemes undertaken in the villages of Almel, Rampur, Kuntoji and Ingalgeri in Bijapur district and published under section 9(2) of the Bombay Land Improvement Schemes Act, 1942.

(2) Whether the Land Improvement Boards C.D. & S.D. were competent to undertake the Schemes notwithstanding the orders of Government contained in Government Resolution (R.D.) No. 1884/39, dated the 6th April 1944, and 28th June 1945, that the land improvement to be carried by the owners of the lands included in the schemes for the years during 1944-45 and 1945-46 shall be carried out by Government under section 25 of the Bombay Land Improvement Schemes Act.

(3) Whether in cases where a subsidy of 25% or more is proposed Government alone is entitled to act under section 25 of the Bombay Land Improvement Schemes Act.

Question (1).- Under Sub-section (2) of section 2 of the Bombay Land Improvement Schemes Act, 1942, the schemes directed to be prepared by Government under sub-section (1) have to be submitted for Government' approval. Sub-section (3) provides that after the scheme is submitted to the Provincial Government or the Board for approval under sub-section (2) the provisions of sections 5 to 23 and the rules made under section 24 shall, so far as they can be made applicable, apply in respect of such scheme, Underxxx section 9(2) the scheme as sanctioned under sub-section (1) shall be published in the Official Gazette and in the village and at the headquarters of the taluka or mahal and of the district in which the lands included in the scheme are situate

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and shall on such publication be final. Section 10 provides that on the date on which the scheme is published in the Official Gazette under subsection (2) of section 9 it shall come into force and shall have effect as if it were enacted in this Act. Reading these provision together it will be clear that the approval of Government to schemes prepared under the direction of Government as provided in section 25(1) is a condition precedent to the publication thereof. Consequently the scheme published in the present case without the previous approval of Government cannot have the effect as if they were enacted in the Act. Government will have therefore to accord their approval to the schemes whereafter they will have to be republished in the Official Gazette. The ex-post-facto sanction proposed to be given to the schemes after publication will not cure the defect.

Question 2.- Sub-section (1) of section 25 of the Bombay Land Improvement Schemes Act provides :-

"Not-withdtanding anything contained in this Act, the Provincial Government may direct the preparation of a land improvement scheme providing for any of the matters specified in sub-section (1) of section 4 in any case in which the Provincial Government or any trust may contribute not less than 20 per cent of the cost of the scheme in any area in which the Provincial Government declareted etc."

Sub-section (2) provides :-

"On such direction the person appointed by the Provincial Government or the Board in this behalf shall prepare in accordance with such instructions as the Provincial Government or the Board may issue a draft scheme containing the particulars specified in sub-section (2) of section 4 and submit it to the Provincial Government or the Board as the case may be for its approval."

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It is clear from these provisions that even schemes under taken under section 25 can be prepared and approved by th Board provided a direction to that effect is issued by Government. It is not known whether Government issued such direction in respect of the preparation by the Board of the schemes covered by the orders of Government in Government Resolution (R.D.) No.1884/39, dated the 6th April 1944, and 28th. June 1945. Even the absence of such direction may not affect the legality of the schemes prepared and approved by the Board as such direction can from the aforesaid Government Resolution be implied.

Question (3).- It is true that the subsidised schemes can be directed to be prepared under section 25 of the Bombay Land Improvement Schemes Act. But as pointed out above such schemes can be prepared and approved even by the Board provided a direction is given by Government to that effect.

Id/- R.T.K.

for Remembrancer of Legal Affairs.

U.R. to R.C.D.No. 529, dated the 21st January 1946.

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It appears that "Gardi Village has 1978 acres included in what is known as the Shegaon Project of 9700 acres. The number of the Khatedars in the whole project is 682 and in the Gardi area 58. Whatever basis is taken, therefore, whether the area of the whole project or of Gardi this scheme will be inside the 33% limit of clause 9 provided in Inamdar's status is similar to that of any Khatedar in the project holding under ordinary tenure." The Inamdar contends that the Bombay Land Improvement Schemes Act, 1942, cannot be applied to his village so long as the settlement Act has not been applied thereto. The question referred to the R.L.A. for consideration is whether the Bombay Land Improvement Schemes Act, 1942, applies to Inam lands.

Sub-section (2) of section 1 of the Bombay Land Improvement Schemes Act, 1942, provides that it shall extend to the whole of the Province of Bombay; and under subsection (3) it shall come into force in such area and on such date as the Provincial Government may, by notification in the Official Gazette, direct. Section 4(1) empowers the Board to direct the preparation of land improvement scheme for any area within its jurisdiction. Under the proviso to section 9(1) if not less than 33 per cent of the total number of the owners of the land included in the scheme other than the ~~ik~~ crown or/~~xxxxx~~ owners other than the crown owing in the aggregate not less than 33 per cent. of the land included in the scheme have made objections to the scheme or part thereof the Board shall submit the scheme to the Provincial Government for its orders. "Owner" as defined in section 2(4) includes as owner in severalty, in common or joint, an occupant as defined in the Bombay Land Revenue Code, 1879, a privileged occupant as defined in the Khoti Settlement-Act, 1880, a tenant who is deemed

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to be a protected tenant under section 3 of the Bombay Tenancy Act, 1939, and a mortegagee in possession. An Inamdar who is a grantee of the soil is an owner within the meaning of section 2(4) (see the definition of "alienated" in section 3(20)of the Bombay Land Revenue Code, 1879). The non-introduction of a survey settlement in the Inam village does not appear to mae any difference. Consequently the objection of the Inamdar of Gardi village does not appear to be valid.

Sd/- P.N.M.
23/3/46.

Remembrancer of Legal Affairs.

U.R. to R.C.D. No. ~~222~~ 2280, dated the 26th March 1946.

4-Cs.

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8/7.

Office of the R.L.A.

No direction either special orgeneral can be issued under section 25(i) of the Bombay Land Improvement Schemes Act, 1942, unless the areas in which the schemes are to be carried out are known. The advantage in calling for such information is that it would enable Government to consider whether it is necessary to give special instruction under sub-section (2) of section 25 in view of the needs of the area concerned.

For para 3 of the draft G.R. at page 63 ante, the following may be substituted:-

Now that all land improvement schemes are being subsidised by Government, strictly speaking directionof Government under sub-section (1) of section 25 of the Land Improvement Schemes Act, 1942, will be necessary in each and every case. In order, however, to enable Government to issue a general direction for the preparation of scheme under sub-section (1) of section 25, the L.I.O (G) should furnish Government with the names of the villages or local areas wherein the preparation of land improvement schemes is under immediate contemplation.

Id/-

P.N.M.
14/5/46

Remembrancer of Legal Affairs.

U.R. to R.C.D. No. 3636, dated the 15th May 1946.

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The view taken by the Commissioners in conference as reported by the Commissioner, Central Division, in his letter at p. 47 ante is correct. Under section 15 of the Bombay Land Improvement Schemes Act, 1942, all amounts due under sections 12,14 and 25A shall be recoverable as arrears of land revenue. Consequently by virtue of section 187 of the Bombay Land Revenue Code all the provisions in Chapter XI shall so far as may be, be applicable to the recovery of all amounts due under sections 11,12,14 and 25A of the Bombay Land Improvement Schemes Act. Section 153 of the Bombay Land Revenue Code will have no application to the recovery of these amounts. Under section 155 of the said Code these amounts can be recovered by sale of the land which has benefited by the land improvement scheme; but if before recovery any encumbrance is created on the land, the recovery would be by sale of the laid subject to such encumbrance. Consequently it is possible as apprehended by the Commissioners that Government is likely to suffer a loss unless the amounts due under sections 11.12. 14 and 25A are made a charge on the land. In the circumstance it is for the administrative Department to consider whether the Bombay Land Improvement Schemes Act should be amended on the lines of clause (c) of section 7(1) of the Land Improvement Loans Act, 1883, as proposed by the Commissioners.

Sd/-
.c. 25/5/46
Remembrancer of Legal Affairs.

U.R. to R.C.D. No. 3923, dated the 25th May, 1946.

4 Cs.
7/7/56
M.M.V.